Supreme Court, U. S.
FILED
MAY 8 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-5324

JULIA GONZALEZ, ETC.,

Petitioner,

—*v.*—

JAMES F. YOUNG, DIRECTOR, HUDSON COUNTY WELFARE BOARD, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 24, 1977
CERTIORARI GRANTED FEBRUARY 21, 1978

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DOCKET ENTRIES

Verified Complaint filed March 11, 1976

Answer of James F. Young filed April 2, 1976

Answer of G. Thomas Riti filed April 6, 1976

Affidavit of Nina Fondi filed April 6, 1976

Affidavit of G. Thomas Riti filed May 7, 1976

Affidavit of Julia Gonzalez filed June 8, 1976

Order of Hon. Curtis Meanor filed August 30, 1976

Opinion of Hon. Curtis Meanor filed August 30, 1976

Notice of Appeal filed September 13, 1976

Attorney's Statement As to Record on Appeal October 15, 1976

Opinion and Order of the 3rd Circuit dated July 15, 1977

Order of Hon. Curtis Meanon pursuant to 3rd Circuit. Opinion Order dated August 18, 1977

Order Granting Petition for Certiorari dated February 21, 1978.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 76-455

JULIA GONZALEZ, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR LUIS GONZALEZ, AGE 9, AND MANUEL GONZALEZ, AGE 10, AND FURTHER ON BEHALF OF ALL PERSONS SIMILARLY SITUATED, PLAINTIFFS

vs.

JAMES F. YOUNG, DIRECTOR, HUDSON COUNTY WELFARE BOARD, AND G. THOMAS RITTI, DIRECTOR, NEW JERSEY DIVISION OF PUBLIC WELFARE, DEFENDANT

VERIFIED COMPLAINT—Filed March 11, 1976

PRELIMINARY STATEMENT

This is a 1983 suit wherein a class of welfare recipients in Hudson County complain that the Hudson County Welfare Board refuses to grant emergency assistance payments even though obligated by Federal Statutes and Federal Regulations to do so. The plaintiffs further complain that the New Jersey Division of Public Welfare persistently refuses to promulgate meaningful administrative procedures directed to a good faith implementation of said emergency assistance, federal statutes and regulations.

JURISDICTION

This court has jurisdiction with respect to this matter under and by virtue of the provisions of 42 U.S.C. 1983, 28 U.S.C. 1343, and 28 U.S.C. 1331.

CLASS ACTION

Plaintiffs are properly classed in this action because they satisfy all of the requirements of F.R.C.P. 23.

PLAINTIFFS

The plaintiffs are Luis Gonzalez, an infant of 9 years, Manuel Gonzalez, an infant of 10 years and Julia Gonzalez, their mother. The health, safety and welfare of each of the Gonzalez's is presently endangered because the defendant James F. Young refuses to grant an emergency assistance welfare payment to them. The plaintiff class consists of all welfare recipients in Hudson County whose emergency assistance requests have been, are now, and will continue to be, until the resolution of this controversy summarily denied by James Young.

DEFENDANTS

James F. Young is the director of the Hudson County Welfare Board. In such capacity he is charged with the obligation of dispensing emergency assistance to needy welfare recipients in Hudson County. On February 3, 1976 and again on February 26, 1976 James Young refused to authorize an emergency assistance payment to Julia Gonzalez.

The defendant G. Thomas Ritti is the director of the Division of Public Welfare of the State of New Jersey. In that capacity he is charged with the obligation of providing administrative fair hearings to welfare recipients who are denied emergency assistance. To this date Mr. Ritti has failed to promulgate a meaningful fair hearing appariti with respect to applicants who are denied emergency assistance.

FACTUAL ALLEGATIONS AS TO THE FIRST CAUSE OF ACTION

1. Julia Gonzalez lives in an apartment at 570 Jersey Avenue, Jersey City, New Jersey with her two children, Luis Gonzalez, age 9 and Manuel Gonzalez, age 10.

2. Julia Gonzalez receives a monthly aid to Dependent Children grant from the Hudson County Welfare Board in the sum of $235.00. In addition she receives a monthly child's disability grant from the Social Security Ad-

ministration in the sum of $157.00. (Her 9 year old son Luis is retarded.) These grants are Julia Gonzalez's sole income.

3. On Monday, February 2, 1976 Julia Gonzalez received the grant from the Hudson County Welfare Board and from the Social Security Administration. As was her customs she went to the FINAST FOOD MARKET on Jersey Avenue and cashed both checks. She received the sum of $392.00; placed same in her wallet in her purse and left the store. Immediately upon leaving the store Julia Gonzalez was accosted by an assailant who took her purse containing all the money and fled.

4. Immediately thereafter Julia Gonzalez proceeded to Precint #5 of the Jersey City Police Department and reported the incident. The police have however not been able to recover any money to this date.

5. The next day Tuesday, February 3, 1976 Julia Gonzalez went to the Hudson County Welfare Board and requested of her caseworker, one Nina Fondi, emergency assistance to enable her to pay her February rent ($65.00) and her gas and electric bill ($98.00) (the gas and electric bill which was received by Julia Gonzalez in the last week of January was for December, 1975 and January, 1976; this is because Public Service bills Julia Gonzalez on a two month basis). Nina Fondi told Julia Gonzalez that the Hudson County Welfare Board could not provide any emergency assistance. (Nina Fondi did however give her food stamps.)

6. Thereafter a representative from Public Service advised Julia Gonzalez that her gas and electricity would be shut off. In addition Julia Gonzalez's landlord advised her that she would have to pay her February rent.

7. In this desperate situation Julia Gonzalez was referred to the attorney who represents her in this action. Her attorney immediately forwarded a letter to James F. Young and to the attorney for the Hudson County Welfare Board requesting emergency assistance (see letter of February 25, 1976 which is attached hereto and made a part of hereof). To this date no meaningful response has been forthcoming from the Welfare Board.

8. As a result of the aforesaid Julia Gonzalez is in imminent danger of having her gas and electricity terminated. She is further within the approximation of dispossession since she can't pay her February rent. She fears for the safety and well-being of her sons, one of whom is retarded, and she fears for her own safety and well-being.

9. Before concluding this statement of facts with respect to Julia Gonzalez it must be pointed out that she has been a recipient of Aid to Dependent Children Assistance for several years and she has never previously applied for emergency assistance. Julia Gonzalez has also been a customer of Public Service for several years and she has never previously failed to timely pay her gas and electricity bill.

10. Regarding the plaintiff class it is alleged that James F. Young patently, pervasively and continually refuses to meaningfully authorize emergency assistance payments when members of the plaintiff class request same.

FIRST CAUSE OF ACTION

1. By refusing to authorize emergency assistance in the sum of $163.00 ($63.00 rent, $98.00 gas and electricity) to Julia Gonzalez even though same is desperately needed and even though Julia Gonzalez is clearly entitled to same under Federal Law the defendant James Young has violated and continues to violate 42 U.S.C. A606(e)(1) and 45 C.F.R. 233.120 which provide for and mandate emergency assistance payment to Aid to Dependent Recipients such as Julia Gonzalez who find themselves in necessitous circumstances. James Young's refusal at bar further violates the New Jersey Assistance Standards Manual (ASH) Section 530 which mandates James Young to provide "emergency assistance payments" to Aid To Dependent Children recipients such as Julia Gonzalez.

2. By refusing to meaningfully authorize emergency assistance payments when needed by the plaintiff class James Young has and continues to violate and offend the aforesaid statutes and regulations.

FACTUAL ALLEGATIONS AS TO THE SECOND CAUSE OF ACTION

1. The defendant G. Thomas Ritti, director of the Division of Public Welfare of the State of New Jersey is charged with the obligation of implementing meaningful administrative procedures for welfare recipients who are denied emergency assistance.

2. To this date Mr. Ritti has failed to implement any meaningful procedures respecting emergency assistance payments. As a result individuals such as the plaintiffs are not only being denied benefits which are available to them under Federal Law they are also being denied access to meaningful administrative review respecting their claims for emergency assistance.

3. In a letter dated February 25, 1976 (see letter attached hereto and made a part hereof) the plaintiffs have called this problem to the attention of Mr. Ritti but to this date Mr. Ritti has done nothing to rectify the problem.

SECOND CAUSE OF ACTION

1. By refusing to implement meaningful administrative review procedures anent emergency assistance payments G. Thomas Ritti has and continues to infringe upon, obstruct and effectively deny Aid to Dependent Children recipients emergency assistance payments which are available to them under the aforesaid federal statutes and regulations.

PRAYER FOR RELIEF

WHEREFORE plaintiffs respectfully pray this Court to:

(a) Assume jurisdiction of this cause; certify plaintiff class; and set this case promptly for a hearing.

(b) Enter an interlocutory injunction mandating James F. Young, Director of the Hudson County Welfare Board to provide Julia Gonzalez an emergency assistance payment in the sum of $163.00 so that Julia Gonzalez

may pay her February rent and gas and electric bill and immunize herself and her children from an environment which will be detrimental to their health and safety.

(c) Enter a declaratory judgment declaring that James F. Young has and continues to violate the plaintiff class's right to emergency assistance payment 42 U.S.C. A606 (e) (1) and 45 C.F.R. 233.120. Consistent therewith enter a permanent injunction restraining and enjoining him from refusing emergency assistance payments in the future.

(d) Enter a declaratory judgment declaring that G. Thomas Ritti has and continues to interfere with, obstruct and effectively deny plaintiff's access to emergency assistance payments as provided under federal law by refusing to implement meaningful administrative review procedures anent emergency assistance. Consistent therewith enter a permanent mandatory injunction requiring G. Thomas Ritti to implement meaningful administrative review procedures anent emergency assistance payments and present said procedures to this court within 1 month of this court's decision.

(e) Order such further relief as this court deems just and equitable.

Respectfully submitted,

HUDSON COUNTY LEGAL SERVICES
Timothy K. Madden
Director

BY: /s/ Theodore A. Gardner
THEODORE A. GARDNER
Attorney for Plaintiffs

AFFIDAVIT

STATE OF NEW JERSEY)
) ss:
COUNTY OF HUDSON)

JULIA GONZALEZ, of full age, being duly sworn according to law, upon her oath, deposes and says:

I have read the foregoing complaint and the facts stated therein are true to the best of my knowledge, information and belief and the above complaint is made in truth and good faith for the purposes set forth herein.

/s/ Julia Gonzalez
JULIA GONZALEZ

[Jurat Omitted in Printing]

ATTACHMENT TO VERIFIED COMPLAINT

February 25, 1976

James F. Young, Director
Hudson County Welfare Board
100 Newkirk Street
Jersey City, New Jersey

Attn: William Surdoval, Attorney
for Hudson County Welfare Board

Re: Julia Gonzalez
HC-12547C

Dear Mr. Surdoval:

I am writing to you in your capacity as the attorney for the Hudson County Welfare Board. I represent Julia Gonzalez, HC-12547C, who resides at 570 Jersey Avenue, Jersey City. On February 2, 1976 Julia Gonzalez received a check from the Hudson County Welfare Board in the sum of $235.00. On that same day Julia Gonzalez received a check in the sum of $157.00 from the Social Security Administration for her son Luiz, (age 9) who is disabled. These two checks represent Julia Gonzalez's sole monthly income. Upon receiving the checks Mrs. Gonzalez went to the Finast Food Market on Jersey Avenue where she cashed both checks and received the sum of $392.00. Immediately upon leaving the store Mrs. Gonzalez was accosted by an assailant who took her purse containing all the money and fled. Mrs. Gonzalez immediately went to Jersey City Police, Precinct number 5 and reported the incident. The next day, February 3, 1976, Mrs. Gonzalez went to the Hudson County Welfare Board and requested emergency assistance from her caseworker, Nina Fondi, so that she would be able to pay her rent and her gas and electric bill. Ms. Fondi gave Mrs. Gonzalez some food stamps but indicated that no money could be given to Julia Gonzalez for her rent and for her gas and electric bill. As a result Mrs. Gonzalez was unable to pay her February rent in the sum of $65.00 and her December/January gas and electric bill

in the sum of $98.00 (Public Service) bills Julia Gonzalez every other month). Public Service has advised Julia Gonzalez that her gas and electricity will be terminated if she does not pay the bill. She has also been advised by her landlord that she must pay her February rent. Because she is unable to do so Julia Gonzalez now fears for her safety and welfare and for the safety and welfare of her two children, age 9 and 10.

It is my legal opinion pursuant to 42 U.S.C.A. 606(e)(1), 45 C.F.R. 233.120 and ASH 530 that Julia Gonzalez is entitled to an emergency assistance payment from the Hudson County Welfare Board in the sum of $163.00. Would you kindly advise me with respect to this request and if payment will not be forthcoming would you kindly advise as to whether or not any emergency administrative procedures have been promulgated by the Hudson County Welfare Board to implement the emergency assistance provisions. If you have any questions with respect to any of the above matters kindly telephone me.

Very truly yours,

Theodore A. Gardner

TAG:hh

cert. mail r/r/r/ #512051

CC: Ann Klein, Commissioner of
Dept. of Institutions and Agencies
Attn: G. Thomas Ritti, Director Division
of Public Welfare
cert mail r/r/r/ #512052

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 76-455

[Title Omitted in Printing]

ANSWER OF JAMES F. YOUNG
Filed April 2, 1976

JAMES F. YOUNG, as Director of the Hudson County Welfare Board, by way of answer, says:

1. As to the first cause of action, the defendant admits denial of application for emergency assistance. However, denies the remainder of the allegations contained in the first paragraph.
2. Defendant denies allegations in the second paragraph.

As to the second cause of action this defendant is not named.

SEPARATE DEFENSE

1. Plaintiff is not entitled to emergency assistance within the guidelines set by New Jersey Assistance Standards Handbook, (ASH, Section 530).
2. Defendant James F. Young denies that the Federal District Court has jurisdiction to hear the subject matter of this suit.
3. Defendant denies that there has been a deprivation of any rights to the plaintiff.
4. Plaintiff has failed to exhaust her administrative remedies.

HUDSON COUNTY WELFARE BOARD
JAMES F. YOUNG
Director

/s/ William D. Surdovel
WILLIAM D. SURDOVEL, ESQ.
Attorney for the Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 76-455

[Title Omitted in Printing]

ANSWER OF G. THOMAS RITI
Filed April 6, 1976

The defendant, G. Thomas Riti, Director, New Jersey Division of Public Welfare in answer to the complaint of plaintiff says:

1. He denies the allegations contained in the preliminary statement portion of the complaint.
2. He admits the allegations in the Jurisdiction portion of the complaint that this court has jurisdiction over Civil Rights cases but deny its applicability in the instant case.
3. He denies the allegation contained in the class action portion of the complaint that the instant action is properly a class action.
4. He is without knowledge or information sufficient to form a belief as to the truth of the allegations in the plaintiff's portion of the complaint.
5. He admits the allegation in the first unnumbered paragraph of the defendants' portion of the complaint that James Young is the Director of the Hudson County Welfare Board but denies the remaining allegations in that paragraph.
6. He admits the allegation of the second unnumbered paragraph of the Defendants' portion of the complaint that he is the Director of the New Jersey Division of Public Welfare, but denies the remaining allegations in that paragraph.
7. He is without knowledge or information sufficient to form a belief as to the truth of the allegations in the numbered paragraphs one through ten of the Factual Allegations As to the First Cause of Action portion of the complaint.

8. He is without knowledge or information sufficient to form a belief as to the truth of the allegations in the numbered paragraphs one through two of the First Cause of Action portion of the complaint.
9. He denies the allegations of the numbered paragraphs one through three of the Factual Allegations As to the Second Cause of Action portion of the complaint.
10. He denies the allegations of the numbered paragraph one of the Second Cause of Action portion of the complaint.

FIRST SEPARATE DEFENSE

This court lacks jurisdiction over the subject matter of plaintiff's complaint.

SECOND SEPARATE DEFENSE

The complaint fails to state a claim against defendant upon which relief can be granted.

THIRD SEPARATE DEFENSE

Defendant has violated no fundamental rights of plaintiffs and at all times has acted in accordance with applicable laws and regulations.

FOURTH SEPARATE DEFENSE

This law suit may not properly be maintained as a class action pursuant to Fed. R. Civ. P. 23.

FIFTH SEPARATE DEFENSE

Plaintiffs have failed to exhaust administrative remedies.

SIXTH SEPARATE DEFENSE

This court should abstain from deciding this case since plaintiffs have neglected to avail themselves of the legislatively mandated channels of relief in State courts.

SEVENTH SEPARATE DEFENSE

The complaint is sham and frivolous and states no substantial federal question.

EIGHTH SEPARATE DEFENSE

Plaintiffs have not been deprived of any right, privilege or immunity accrued to him by the United States Constitution or any Act of Congress.

RESERVATION OF RIGHT

The defendant reserves the right, at or before trial of the cause, to move to dismiss the complaint and/or for summary judgment upon the grounds that the complaint fails to state a claim against defendant upon which relief can be granted and defendant is entitled to judgment as a matter of law.

WILLIAM F. HYLAND
Attorney General of New Jersey
Attorney for Defendant,
G. Thomas Ritti, Director,
New Jersey Division of
Public Welfare

By: /s/ Paul N. Watter
PAUL N. WATTER
Deputy Attorney General

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

AFFIDAVIT OF NINA FONDI
Filed April 6, 1976

STATE OF NEW JERSEY)
) ss.
COUNTY OF HUDSON)

NINA FONDI, of full age upon her oath deposes and says:

1.) I am Social Worker employed at the Hudson County Welfare Board.

2.) On the first week of February, Julia Gonzalez came to the Hudson County Welfare Board seeking emergency assistance alleging she had lost the proceeds of the February check.

3.) At that point in conversation, Mrs. Gonzalez informed me that the rent for the month of February was unpaid. She also informed me that there was an outstanding bill from utility, P.S.E. & G. CO., but that bill had not yet been received.

4.) At no time did she tell me that any dispossession or eviction action had been taken, nor was there any indication to me that the gas and electric had been shut off at her apartment.

5.) She reported to the Food Stamp area where an issuance was obtained for her and she was referred to the Food Action Committee of Hudson County.

6.) I explained to her that the lost cash could not be replaced, and since there was not an imminent state of homelessness or imminent threat of the utilities being shut off, it was determined that she was not qualified for emergency assistance under the Provisions of ASH 530.3.

7.) This action on my behalf was reviewed by the Administrative Supervisor, Katherine Bear, whom I un-

derstand thereafter made the final determination that there was not a qualification for emergency assistance.

/s/ Nina Fondi
NINA FONDI
Social Worker

[Jurat Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 76-455

AFFIDAVIT OF G. THOMAS RITI
Filed May 7, 1976

[Title Omitted in Printing]

STATE OF NEW JERSEY)
) ss:
COUNTY OF MERCER)

G. THOMAS RITI, of full age, being duly sworn according to law upon his oath deposes and says:

1. I am the Director of the New Jersey Division of Public Welfare and am a defendant in the lawsuit known as *Gonzalez* v. *Young*.

2. In my capacity as Director, I am responsible for the administration of public assistance programs in New Jersey. I do not, however, possess either the power or authority to promulgate regulations in conjunction with the Aid to Families with Dependent Children (AFDC) program, of which the Emergency Assistance program is a part. Pursuant to N.J.S.A. 44:10-3, the Legislature has delegated such power and authority only to the Commissioner of Institutions and Agencies.

3. New Jersey has participated in the federally funded Emergency Assistance program authorized by Title IV-A of the Social Security Act since March 1969.

4. At all times since that date, New Jersey's Emergency Assistance regulation has been approved by the Department of Health, Education and Welfare.

5. The current New Jersey Emergency Assistance regulation, contained in § 530 of the Assistance Standards Handbook, was approved by Elmer Smith, Regional Commissioner of the Department of Health, Education and Welfare, on August 4, 1975. A copy of the notice of approval is attached to this affidavit.

/s/ G. Thomas Riti
G. THOMAS RITI

[Jurat Omitted in Printing]

SOCIAL AND REHABILITATION SERVICE
Washington, D. C. 20201

AFFIDAVIT: G. THOMAS
DATED: May 7, 1976.

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL
SOCIAL AND REHABILITATION SERVICE STATE PLAN PROGRAMS

TO: REGIONAL COMMISSIONER
SOCIAL AND REHABILITATION SERVICE
DEPARTMENT OF HEALTH, EDUCATION, & WELFARE

TRANSMITTAL NUMBER: 75-3

I PROGRAM IDENTIFICATION *(Same identification as title page of preprinted plan)*

State Plan for Title IV-A - (Income Maintenance)

II TYPE OF ACTION SUBMITTED FOR APPROVAL *(Check one and enter effective date)*

☒ NEW STATE PLAN
☐ AMENDMENT

EFFECTIVE DATE ⇨ May 1, 1975

COMPLETE REMAINDER OF PART II IF THIS IS AN AMENDMENT *(Separate transmittal for each amendment)*

FEDERAL REGULATION CITATION

45 CFR, Chapter II

NUMBER OF THE PLAN SECTION OR ATTACHMENT	NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT
Assistance Standards Handbook	Financial Assistance Manual

SUBJECT OF AMENDMENT

III GOVERNOR'S REVIEW *(Check one)*

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL TO GOVERNOR'S OFFICE

/X/ No objection by Governor's Office to formal adoption following advance publication in conformity with New Jersey's Administrative Procedure Act.

SIGNATURE OF STATE AGENCY OFFICIAL

TITLE
Ann Klein, Commissioner
N.J. Department of Institutions & Agencies

DATE
6/2/75

RETURN TO: *(Name and Address of State Agency)*

Division of Public Welfare
120 E. Hanover Street
Trenton, New Jersey 08625

REPORT OF SRS APPROVAL

DATE RECEIVED IN REGIONAL OFFICE: 6/6/75

REGION: II

Plan approved — one copy attached

SIGNATURE OF REGIONAL OFFICIAL

TITLE: REGIONAL COMMISSIONER

DATE: 8/4/75

REMARKS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

AFFIDAVIT OF JULIA GONZALEZ
Filed June 8, 1976

STATE OF NEW JERSEY)
) ss:
COUNTY OF HUDSON)

JULIA GONZALEZ, of full age, being duly sworn according to law upon her oath deposes and says:

1. Since February I have received several letters from Public Service Gas & Electric demanding payment of my utility bill which came due in that month. Since February I have also received many oral inquiries from my landlord about the February rent.

2. I do not like to owe people money and accordingly in April I began taking $20.00 from my monthly income and applying it to the utility bill which became due in February and I also began applying $20.00 to the February rent.

3. As a result of this I have less money to buy food and other items of necessity for myself and my children.

4. I am in desperate need of my full monthly grant. Even this is not enough to buy all of the children's necessities, however, with the $40.00 deduction each month, it is nearly impossible for me to get by.

/s/ Julia Gonzalez
JULIA GONZALEZ

[Jurat Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 76-455

JULIA GONZALEZ, etc., PLAINTIFF

v.

JAMES F. YOUNG, et al., DEFENDANTS

ORDER—Filed August 30, 1976

This cause came on to be heard by the above-entitled court on June 14, 1976 upon the motion of defendants for summary judgment and upon the cross-motion of plaintiff for summary judgment. This court, having carefully considered the same, the affidavits, the pleadings and the briefs in support thereof and in opposition thereto, with Theodore A. Gardner, Esq., appearing as attorney for plaintiff, William D. Surdovel, Esq., appearing as attorney for defendant James Young, and Richard M. Hluchan, Deputy Attorney General, appearing as attorney for defendant G. Thomas Riti, and being fully advised herein, finds that the motion of the plaintiff is not well taken and shall be, and it hereby is, denied.

The court further finds as to the motion of defendants that there is no genuine issue as to any material fact and the defendants are entitled to judgment as a matter of law.

Therefore, it is hereby

ORDERED, that defendants' motion is granted, and judgment is hereby entered for defendants.

Dated:

/s/ H. Curtis Meanor
H. CURTIS MEANOR
U.S.D.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 76-455

JULIA GONZALEZ, etc., PLAINTIFF

v.

JAMES F. YOUNG, etc., et al., DEFENDANTS

OPINION—Filed August 30, 1976

Appearances:

Hudson County Legal Services Corporation
Attorney for Plaintiff
BY: Theodore A. Gardner, Esq.

Hudson County Welfare Board
BY: William D. Surdovel, Esq.
Legal Assistant
Attorney for Defendant, Young

William F. Hyland, Esq.
Attorney General of New Jersey
Attorney for Defendant, Riti
BY: Richard M. Hluchan, Esq.
Deputy Attorney General

MEANOR, District Judge.

The parties have filed cross motions for summary judgment. Following the filing of briefs directed to the issues raised in these motions, as well as to the issue of this court's jurisdiction, arguments were heard and decision was reserved. Due consideration having been given to the arguments advanced by the parties, the court has concluded that the plaintiff's motion for summary judgment will be denied on the grounds that the state regulation in question is not in conflict with the federal statute

and regulation. For the reasons that appear below, judgment will be entered in favor of defendants Young and Riti.

The facts material to decision are not in dispute. The first named plaintiff, Julia Gonzalez, resides in Jersey City, New Jersey with her two children, Luis and Manuel. She and her children are impoverished. Each month Julia Gonzalez receives a check from the Hudson County Welfare Board in the amount of $235. This check is issued pursuant to the Aid to Families with Dependent Children program, hereinafter AFDC. 42 U.S.C. § 601 et seq. AFDC is funded in major part by the federal government and to a lesser extent by state and local authorities. The AFDC check lists Ms. Gonzalez and her son Manuel, age 10, as beneficiaries. Luis Gonzalez, who is retarded, is the recipient of $157 per month from the Social Security Administration's disability program. This check is made payable to Ms. Gonzalez as the protective payee for Luis. Thus, the Gonzalez family receives a total of $392 per month.

On Monday, February 2, 1976, Ms. Gonzalez received the two checks for the month of February. As was her custom, she cashed both of these checks at a supermarket near her home and placed the $392 inside her pocketbook. On her way home from the store, she was accosted, and her pocketbook was stolen. She was then left without the funds needed to pay her rent and utility bills which fell due in the month of February. Ms. Gonzalez reported that theft to the Jersey City police, but there has been no recovery of the stolen cash.

The following day, plaintiff went to the Hudson County Welfare Board to request a grant of emergency assistance in the amount of $163, $65 for rent and $98 for the utility bill. The request was refused by the case worker, Ninda Fondi. Ms. Gonzalez did, however, receive a quantity of food stamps from Miss Fondi. The denial of emergency assistance benefits was based upon a determination by the case worker and her administrative supervisor that Ms. Gonzalez did not qualify under the provisions of § 4810 of the New Jersey Public Assistance

Manual for a grant of emergency assistance. Miss Fondi made phone calls to Ms. Gonzalez's landlord and to the utility company and had received verbal assurances that the utilities would not be turned off and that the landlord would take no steps to evict the Gonzelez family.

Ms. Gonzalez then retained an attorney and made a written request for an emergency grant to the Hudson County Welfare Board on February 25, 1976. The Board thereafter responded and denied the application. Subsequently, plaintiff's attorney wrote to Mr. G. Thomas Riti, the Director of the New Jersey Division of Public Welfare, requesting an accelerated hearing in regard to the County Board's denial. Apparently, this letter was not answered.

Plaintiff commenced this action on March 11, 1976. On the same day, the court signed an order to show cause, making it returnable April 12, 1976. This order directed the defendants to answer within 20 days of service upon them and to be prepared on April 12, 1976 to show cause why the following orders should not issue:

(a) an interlocutory injunction mandating defendant James F. Young to pay Julia Gonzalez the sum of $163 immediately;

(b) an order certifying the proposed plaintiff class, and

(c) an order permitting the named plaintiffs to proceed in forma pauperis.

The order to show cause additionally specified the manner in which the defendants were to be served with process.

The verified complaint is drawn in two counts. The first count alleges that James F. Young's denial of emergency assistance benefits to Ms. Gonzalez unlawfully deprived her of a right secured to her under federal statute and regulation, 42 U.S.C. § 606(e)(1) and 45 C.F.R. § 233.120. It further alleges that Young's denial was also a violation of state law. The second count is directed at Mr. Riti and alleges that his failure to implement any meaningful administrative review procedures in regard to emergency assistance payments has and continues to

"infringe upon, obstruct and effectively deny" AFDC recipients emergency assistance payments which are available to them under federal law.

By way of relief, the complaint seeks a preliminary injunction compelling defendant Young to pay the plaintiff the $163 she seeks in emergency assistance, a declaratory judgment finding that defendant Young has violated and continues to violate plaintiff's rights under federal law and a permanent injunction restraining Young from refusing emergency assistance benefits in the future. Furthermore, the complaint seeks declaratory and injunctive relief against defendant Riti.

Both of the defendants filed timely answers to the complaint and a hearing was held on the return date of the order to show cause. By letter opinion dated April 15, 1976, the court denied the application for preliminary injunctive relief against defendant Young. The court said at that time, "it is clear from the facts before the court that neither Public Service nor the landlord has undertaken steps to discontinue utility service or to evict. Thus, plaintiff is not faced with immediate and irreparable harm." The court also made a preliminary determination that the New Jersey Administrative Code provisions governing the issuance of emergency assistance benefits do not conflict with federal law. The court declined to consider the question of class certification at that time, finding that the matter had not been adequately presented and that there was not sufficient information before the court "upon which to found a decision that a properly defined class exists." Finally, the court raised serious question regarding the jurisdiction of the court to hear the matter and ordered the parties to submit briefs on the matter and to appear for oral argument on June 14, 1976.

On May 12, 1976, defendant Riti, by counsel, moved for summary judgment or in the alternative for an order dismissing the complaint as to him for failure to state a claim upon which relief can be granted. The basis for this motion is the assertion contained in Riti's affidavit that he has no power or authority to promulgate regulations in conjunction with the AFDC program, and, therefore, cannot be ordered to promulgate such regulations.

Plaintiff filed a counter motion for summary judgment on June 10, 1976 which was made returnable on June 14, 1976 so as to be heard at the same time as the other pending matters.

The hearing was held on June 14, 1976, following which the decision of the matter was submitted to the court on undisputed facts. At this hearing, it was brought to the court's attention that the New Jersey Commissioner of Institutions and Agencies had issued a new set of regulations providing for emergency fair hearings to review denials of requests for emergency assistance. Plaintiff's attorney conceded that, should this court require the plaintiff to exhaust her state administrative procedures as a prerequisite to bringing this action in the district court, the newly established state procedures were adequate. Consequently, it would appear that the relief sought under the second count of the complaint has been mooted.

At the conclusion of the hearing, the court indicated that it would await the decision by the Supreme Court in a case then pending which concerned exhaustion requirements in § 1983 suits. *Burrell* v. *McCray*, —— U.S. ——, No. 75-44, decision below reported at 516 F.2d 357 (4th Cir. 1975). By order of June 14, 1976, the Supreme Court dismissed the writ of certiorari as improvidently granted, thereby letting stand the decision of the Court of Appeals for the Fourth Circuit. In these circumstances, it would appear that the plaintiff should not be required to exhaust her state administrative remedies before coming here.

JURISDICTION

The complaint states a claim under 42 U.S.C. § 1983, which provides a cause of action for a deprivation, under color of state law, of any "rights, privileges or immunities secured by the Constitution and laws" of the United States. The plaintiff alleges that the New Jersey regulations implementing the federal emergency assistance program for AFDC recipients conflict with the ap-

plicable federal regulations and, thus, deprive her of the right to receive the federally mandated benefits. Compare, 42 U.S.C. § 606(e)(1) and 45 C.F.R. § 233.120 with New Jersey Administrative Code 10:82-12.11. The plaintiff further alleges that as a result of the narrower eligibility requirements established under the New Jersey regulation, she has been deprived, under color of state law, of rights secured by both the Constitution and laws of the United States. The only constitutional claim the plaintiff presents is that the alleged conflict between the state and federal statutes and regulations violates rights secured for her by the Supremacy Clause of the Constitution. The claim that she has been deprived of rights secured by the laws of the United States is essentially the same: that is, that she has a right under the federal statutes and regulations to receive emergency assistance benefits which are being denied her by state and local officials acting under color of state law.

Plaintiff seeks to posit jurisdiction over these § 1983 claims upon 28 U.S.C. §§ 1331 and 1343. It is unquestionable that the plaintiff has stated a claim arising under the Constitution or laws of the United States and that, if the amount here in controversy exceeded $10,000, exclusive of costs and interest, this court would have jurisdiction under § 1331. However, it is apparent on the face of the complaint that the plaintiff seeks only $163 in damages together with declaratory and injunctive relief. Even as a class action, the amount in controversy requirement cannot be met because the individual claims of the members of this class cannot be aggregated. *Snyder* v. *Harris*, 394 U.S. 332 (1969). Therefore, this court has no jurisdiction to entertain the complaint under § 1331. *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U.S. 283 (1938).

Plaintiff's claim of jurisdiction under § 1343 is more substantial. There is no doubt that when a complaint states a non-frivolous constitutional claim under § 1983, a district court has the power under 42 U.S.C. § 1343(3) to decide other statutory claims based upon § 1983 even though it has not determined that there is an independent basis for district court jurisdiction over those claims.

Hagans v. *Levine*, 415 U.S. 528 (1974). Indeed, the court in *Hagans*, and in *Townsend* v. *Swank*, 404 U.S. 282 (1971) and *King* v. *Smith*, 392 U.S. 309 (1968) held that the case should be disposed of on the non-constitutional grounds if at all possible. Consequently, the Supreme Court has passed upon questions of federal statutory rights under the Social Security Act without having to decide whether, absent a non-frivolous constitutional claim to which to pend these claims, there is an independent basis for federal jurisdiction under § 1343(3) or (4).

Section 1983 creates a federal cause of action for a deprivation, under color of state law,

> of any rights . . . secured by the Constitution and laws of the United States.

Section 1343 invests the district courts with jurisdiction, without regard to the amount in controversy, of any civil action authorized to be commenced by any person:

> (3) To redress the deprivation, under color of state law . . . of any right . . . secured by the Constitution of the United States or by any Act of Congress *providing for equal rights of citizens*. . . .
>
> (4) . . . under any Act of Congress *providing for the protection of civil rights*, including the right to vote. (Emphases supplied.)

On its face, the language employed by the Congress in both (3) and (4) is narrower than that used in § 1983. The legislative history of the disparity between § 1983 and § 1343(3) does not explain the disparity with certainty; however, some observers have concluded that this disparity was simply accidental. *Lynch* v. *Household Finance Corp.*, 405 U.S. 538, at n.7 (1972); *Note, Federal Judicial Review of State Welfare Practices*, 67 Col. L. Rev. 84 (1967); *Hart and Weschler, The Federal Courts and the Federal System*, p. 961 (2d Ed. 1973).

Plaintiff urges several interpretations of § 1343(3) and (4), any one of which would result in a finding of district court jurisdiction over all non-constitutional claims brought under § 1983 regardless of the amount in controversy. Plaintiff argues that the underscored language

in (3) is superfluous; that § 1983 is itself an Act of Congress "*providing for equal rights of citizens*" within the meaning of (3); that § 1983 is itself an Act of Congress "*providing for the protection of civil rights*" within the meaning of (4); and, finally, that, taken as a whole, § 1343 was meant to confer jurisdiction over all claims arising under § 1983. Plaintiff, of course, also contends that the complaint states a non-frivolous constitutional claim over which it is undisputed that this court must exercise jurisdiction under (3).

All of these assertions are highly arguable, and, were this a matter of first impression in this district, they would require the most careful analysis. However, many of these same questions have recently been resolved by Judge Cohen of this district in a manner which compels me to conclude that this court must exercise jurisdiction over the plaintiff's statutory claims under both (3) and (4). *Vazquez* v. *Perre*, 404 F.Supp. 815 (D.C. N.J. 1975). Thus, the court finds it unnecessary to decide whether the "secured by the Constitution" language of § 1343(3) should be construed to include Supremacy Clause issues and finds it unnecessary to decide independently any of the other issues presented by the parties on this question of jurisdiction.

MERITS OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

New Jersey has elected to participate under that part of the Social Security Act which provides federal matching funds for state grants of emergency assistance to needy families with children. 42 U.S.C. § 606(e)(1); New Jersey Administrative Code 10:82-12.11. Plaintiff contends that the standards of eligibility established by the New Jersey regulations violate federal law in that they are more restrictive than the standards of eligibility mandated by the federal statute and regulations.

43 U.S.C. §606(e)(1) defines "emergency assistance to needy families with children" as the payments of money, among other payments, to a needy child under the age of 21 meeting certain specification, "where such child is

without available resources" which payments "are necessary to avoid destitution of such child or to provide living arrangements in a home for such child." This same section provides that such emergency assistance shall not exceed a period of 30 days in any 12 month period.

The regulations implementing 42 U.S.C. § 606(e)(1) are contained at 45 C.F.R. § 233.120. These regulations establish the minimum standards that proposed state plans, under Title IV, Part A, of the Social Security Act must meet. The proposed state plans must specify eligibility conditions imposed for the receipt of emergency assistance, which conditions may be more liberal than those applicable to other parts of the plan. The proposed state plans must specify whether migrant workers with families are to be included; which emergency needs are to be met; and what services the state proposes to supply. The proposed plan must also provide that emergency assistance shall be given forthwith. 45 C.F.R. § 233.120(a). The regulations also specify the extent of federal financial participation in the grants of emergency assistance. Subject to certain limitations not here relevant, the federal government will contribute to emergency assistance payments made to a qualified child where such "child is without resources immediately accessible to meet his needs," and "the emergency assistance is necessary to avoid destitution of such child or to provide living arrangements for him in a home." 45 C.F.R. § 233.120(b)(ii) and (iii).

New Jersey submitted a proposed plan to the Department of Health, Education and Welfare which met with the Secretary's approval. The provisions of this plan are now embodied in New Jersey Administrative Code 10:82-12.11. These regulations define "emergency assistance" as "any extra or additional payment(s) authorized in accordance with subsections (b) and (c) of this Section during the period of 30 consecutive days immediately following the occurrence of an emergency as defined in subsection (c) of this Section." § 10:83-12.11(a). Subsection (b) contains certain provisions not relevant to this case. Subsection (c) provides, in pertinent part, that emergency assistance payments may be made "when be-

cause of an emergent situation over which they had no control or opportunity to plan in advance, the eligible unit is in a state of homelessness." Subsection (c)(1) further provides that "[w]hen an actual state of homelessness exists or is manifestly imminent, the county welfare board shall authorize payment. . . ."

The plaintiff contends that the New Jersey regulation illegally deprives her of a right, secured by the federal statute, to receive emergency assistance benefits in her present circumstances. While it is established that the standards of eligibility defined under the federal statute and regulations imposed mandatory minimum standards on the states, it is the conclusion of this court that eligibility standards established by the New Jersey regulations are not in conflict with the standards set out in the federal statute or regulations.

Plaintiff relies upon *Mandley* v. *Trainor*, 523 F.2d 415 (7th Cir. 1975); *Williams* v. *Wohlgemuth*, 400 F.Supp. 1309 (E.D. Pa.), affirmed —— F.2d ——, No. 74-3162 (3d Cir. July 20, 1976), and *Purnell* v. *Edelman*, 511 F.2d 1248 (7th Cir. 1974), all of which stand for the proposition that states participating in the federal emergency assistance program must at least meet the standards established under federal law.

In *Mandley*, supra, the court held that a state cannot legally limit the availability of emergency benefits to those persons who are otherwise qualified to receive AFDC benefits. Rather, the court held the class of beneficiaries must be as broad as that defined in 42 U.S.C. § 606(e)(1). In the present case, there is no allegation that New Jersey has restricted the class of persons eligible to receive emergency benefits. The allegation here is that New Jersey has illegally restricted the categories of emergencies for which eligible persons are entitled to receive benefits. *Purnell*, supra, and *Williams*, supra, both involved challenges to the definition of "destitution" contained in state plans. While neither of them is directly on point, *Purnell* does closely approximate the factual context of this case. In *Purnell*, the state of Illinois had defined "destitution" to include being without public utility service. However, the state would not provide

emergency assistance benefits on this basis unless the eligible person was presently without utilities. The court held that the state must also furnish emergency assistance to prevent the discontinuance of the utility services where such termination is shown to be imminent and otherwise unavoidable.

Unlike the Illinois regulations in question in *Purnell*, supra, the New Jersey regulations here in question do provide for the grant of emergency assistance in order to prevent the destitution of an eligible child. As is provided in § 10:82-12.11(c)(1) of the New Jersey Administrative Code, the county welfare board shall authorize the payment of emergency assistance benefits "[w]hen an actual state or homelessness *exists or is manifestly* imminent. . . ." (Emphasis supplied.) Prior to denying the plaintiff emergency assistance, the county board contacted both the plaintiff's landlord and the utility company and ascertained that no action was then planned either to evict or to terminate utilities services. In these circumstances, there was no "manifestly imminent" state of homelessness as defined in subsection 10:82-12.11(c)(1). To deny benefits in these circumstances comports with the decision of the court in *Purnell*, and is in line with the federal statute and regulations which aim to prevent the destitution of eligible children. To require New Jersey to grant assistance where there is only a remote threat of eviction or discontinuation of utility services would be to go beyond the scope and intent of the federal law.

For the foregoing reasons, the plaintiff's motion for summary judgment will be denied. As this denial disposes of all claims against the defendant Young, the complaint shall be dismissed as to him. Inasmuch as the complaint, as it relates to defendant Riti has been rendered moot, see discussion above at page 5, the entire complaint shall be dismissed.

Defendants to submit appropriate orders.

DATED: August 13, 1976.

U.S. COURT OF APPEALS

Docket No.

UNITED STATES DISTRICT COURT

Docket No. 76-455

Civil Action

NOTICE OF APPEAL—Filed September 13, 1976

JULIA GONZALEZ, etc., PLAINTIFF-APPELLANT,

v.

JAMES F. YOUNG, et al., DEFENDANTS-RESPONDENTS.

TO: Chief Clerk,
United States District Court
District of New Jersey

Chief Clerk,
United States Court of Appeals
for the Third Circuit

Richard M. Hluchan,
Deputy Attorney General
Attorney for Respondent Riti

William Surdovel, Esq.
Attorney for Respondent Young.

SIRS and MADAM:

NOTICE is hereby given that Julia Gonzalez, individually and as Guardian Ad Litem for Luis Gonzalez, age 9, and Manuel Gonzalez, age 10, and further on behalf of all persons similarly situated now appeals in the above captioned cause to the United States Court of Appeals for the Third Circuit from an Order of the United States District Court, per the Honorable Curtis Meanor dated September 10, 1976. Said Order entered Summary Judg-

ment in favor of James F. Young, Director of the Hudson County Welfare Board, and G. Thomas Riti, Director, New Jersey Division of Public Welfare, and held that no conflict presently exists between 42 U.S.C. 606 (e) (1) and 45 C.F.R. 233.120 on the one hand and New Jersey Administrative Code: 10:82-12.11, et seq., on the other hand. The only other parties to this action are respondents Young and Riti.

HUDSON COUNTY LEGAL SERVICES
TIMOTHY K. MADDEN, *Director*
Attorneys for Plaintiff-Appellant

By: /s/ Theodore A. Gardner
THEODORE A. GARDNER, ESQ.

U.S. COURT OF APPEALS

Docket No.

UNITED STATES DISTRICT COURT

Docket No. 76-455

Civil Action

ATTORNEY'S STATEMENT REGARDING THE RECORD ON APPEAL (PURSUANT TO RULE 10(b))—Filed Oct. 15, 1976

[Title Omitted in Printing]

To: Richard M. Hluchan,
Deputy Attorney General
Attorney for Respondent Riti

William Surdovel, Esq.
Attorney for Respondent Young

SIRS:

The issue on appeal is: Does a conflict exist between 42 U.S.C. 606(e)(1) and 45 C.F.R. 233.120 on the one hand and N.J.A.C. 10:82-12.11, et seq., on the other hand.

I believe that the following contain all of the requisite facts necessary for a resolution of the issue on appeal:

(a) Opinion of Judge Meanor dated August 13, 1976;

(b) Affidavit of Julia Gonzalez dated June 10, 1976;

(c) Affidavit of G. Thomas Riti dated May 12, 1976;

(d) Affidavit of Nina Fondi dated April 6, 1976;

(e) Verified Complaint of Julia Gonzalez dated March 11, 1976.

If you disagree, kindly advise.

/s/ Theodore A. Gardner
THEODORE A. GARDNER, ESQ.
Attorney for Plaintiff-Appellant

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 76-2410

GONZALEZ, JULIA, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR LUIS GONZALEZ, AGE 9, AND MANUEL GONZALEZ, AGE 10, AND FURTHER ON BEHALF OF ALL PERSONS SIMILARLY SITUATED, APPELLANT,

v.

YOUNG, JAMES F., DIRECTOR, HUDSON COUNTY WELFARE BOARD AND G. THOMAS RITTI, DIRECTOR, NEW JERSEY DIVISION OF PUBLIC WELFARE

Appeal from the United States District Court
for the District of New Jersey

(D.C. Civil No. 76-455)

Argued June 7, 1977

Before: ALDISERT, ROSENN and HUNTER, *Circuit Judges.*

Hudson County Legal Services
TIMOTHY K. MADDEN, Director
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Jersey City, New Jersey 07306

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Of Counsel:

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PUBLIC WELFARE

OPINION OF THE COURT

(Filed July 15, 1977)

ALDISERT, *Circuit Judge.*

This appeal requires us to resolve a question which was left open by the Supreme Court in *Hagans* v. *Lavine*,

415 U.S. 528 (1974), and which has divided the circuits. We are to decide whether the district court had jurisdiction in a claim for damages totalling less than $10,000 and alleging that a state regulation conflicts with a federal statute and therefore must fall because of the Supremacy Clause.

The question is presented in an appeal by Julia Gonzalez from summary judgment in favor of appellees James F. Young, Director of the Hudson County, New Jersey Welfare Board, and G. Thomas Ritti, Director of the New Jersey Division of Public Welfare. The district court, presented with a challenge to New Jersey welfare regulations which allegedly deprived Gonzalez of benefits ensured by a federal statute, determined that no conflict existed between the challenged state regulations and the applicable provisions of the federal statute and accompanying regulations. Because we determine that the district court did not have jurisdiction over this case in the posture in which it was presented, we vacate the district court's order and remand for dismissal of the complaint for want of jurisdiction.

I.

Appellant resides with her two children in Jersey City, New Jersey. Each month, she receives $235.00 under the Aid to Families with Dependent Children program (AFDC), 42 U.S.C. § 601 *et seq.*, as well as $157.00 under the Social Security Administration's disability program for her one retarded son. On February 2, 1976, Gonzalez received and cashed both checks at a neighborhood food market. Upon leaving the store, she was accosted by a robber who stole the cash. The following day she explained her situation to the Hudson County Welfare Board, requesting $163.00 in emergency assistance funds to cover her rent and utility bills.

States which elect voluntarily to participate in the federal government's AFDC program dispense the federal monies ("matching funds") obtained under the program according to federal eligibility criteria. Minimum standards for emergency assistance eligibility are set out in 42 U.S.C. § 606(e)(1) and its accompanying regula-

tion, 45 C.F.R. § 233.120. The statute provides that emergency assistance to needy families with children embraces cases "where [an eligible] child is without available resources, the payments, care or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment. . . ." 42 U.S.C. § 606(e)(1).

45 C.F.R. 233.120(a)(1) provides that in order to receive funding, a participating state must specify in a "state plan" the eligibility conditions to be imposed for receipt of emergency assistance. After electing to participate in the AFDC program, New Jersey promulgated the following provision in regard to emergency assistance payments:

> When because of an emergent situation over which they have had no control or opportunity to plan in advance, the eligible unit is in a state of homelessness; and the County Welfare Board determines that the providing of shelter and/or food and/or emergency clothing, and/or minimum essential house furnishings are necessary for health and safety, such needs may be recognized in accordance with the regulations and limitations in the following sections.

N.J.A.C. 10:82-5.12. Pursuant to this state regulation, on March 15, 1976, the Hudson County Welfare Board formally denied Gonzalez' request for emergency assistance, stating that no assistance would be granted because Gonzalez was not in an "imminent or actual state of homelessness."

In her complaint to the district court, Gonzalez alleged that appellee Young violated 42 U.S.C. § 606(e)(1) and 45 C.F.R. 233.120 by refusing to authorize emergency assistance in the amount of $163.00 "even though Julia Gonzalez is clearly entitled to same under Federal Law . . . ." She further alleged that appellee Ritti was responsible for "refusing to promulgate meaningful administrative procedures" for the emergency assistance

program, a claim which was mooted by subsequently promulgated state regulations. Although not articulated, the gravamen of the complaint, and what is pressed on appeal, is that the New Jersey standard violates federal law because it is more restrictive than the standards mandated by federal statutes.

II.

Gonzalez predicated jurisdiction in the district court upon 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331, 1343. Section 1983 provides for a federal cause of action to redress the deprivation, under color of state law, "of any rights, privileges, or immunities secured by the Constitution and laws. . . ." We hold that it is not a jurisdictional statute; it only fashions a remedy. Thus, although Gonzalez may have asserted a claim under section 1983, she had to look to other authority to obtain jurisdiction.

At the onset, 28 U.S.C. § 1311 was properly rejected by the district court because the amount in controversy did not exceed $10,000.00. Gonzalez sought only $163.00 in damages, along with declaratory and injunctive relief. Thus, it appears "to a legal certainty that the claim is really for less than the jurisdictional amount." *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U.S. 283, 289 (1938). *See Nelson* v. *Keefer*, 451 F.2d 289 (3d Cir. 1971).

The use of 28 U.S.C. § 1343 as a jurisdictional wellspring for her section 1983 claim, however, is not as clear. Whether it can be used as such is a question of lively and current proportion, on which the circuits are split. The statute provides, in relevant part:

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> . . .
>
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act

of Congress *providing for equal rights* of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress *providing for the protection of civil rights*, including the right to vote.

28 U.S.C. § 1343(3), (4) (emphasis added).

A.

Any inquiry into the scope of section 1343 must make immediate reference to the Supreme Court case of *Hagans* v. *Lavine*, *supra*. In *Hagans*, the Court decided that when a constitutional claim is made under section 1983 which is of sufficient substance to support federal jurisdiction, a district court has the power under section 1343(3) to consider other claims based on section 1983 without determining that the latter claims, standing alone, are sufficient to support jurisdiction. The current inter-circuit disagreement is largely over whether a claim that a state law conflicts with federal law is of "sufficient substance" to confer jurisdiction, and when, absent a clearly sufficient constitutional claim, there exists an independent basis for jurisdiction under section 1983. Indeed, the questions have been specifically left open by the Supreme Court on a number of occasions. In *King* v. *Smith*, 392 U.S. 309 (1968), the Court stated: "We intimate no views as to whether and under what circumstances suits challenging AFDC provisions only on the ground that they are inconsistent with the federal statute may be brought in federal courts." *Id.* at 312 n.3. And in *Hagans*, *supra*, the Court stated:

> In view of our disposition of this case, we do not reach the question whether, wholly aside from the pendent-jurisdiction rationale relied upon by the District Court, other valid grounds existed for sustaining its jurisdiction to entertain and decide the claim of conflict between federal and state law. It has been suggested, for example, that the conflict question is itself a constitutional matter within the meaning of § 1343(3). *Connecticut Union of Welfare Employees* v. *White*, 55 F. R. D. 481, 486 (Conn. 1972). For purposes of interpreting and applying 28 U.S.C. § 2281, the three-judge-court provision, a claim of conflict between federal and state law has been denominated a claim not requiring a three-judge court. *Swift & Co.* v. *Wickham*, 382 U.S. 111 (1965). But *Swift* itself recognized that a suit to have a state statute declared void and to secure the benefits of the federal statute with which the state law is allegedly in conflict cannot succeed without ultimate resort to the Federal Constitution—"to be sure, any determination that a state statute is void for obstructing a federal statute does rest on the Supremacy Clause of the Federal Constitution." *Id.*, at 125. Moreover, when we have previously determined that state AFDC laws do not conform to the Social Security Act or HEW regulations, they have been invalidated under the Supremacy Clause. See *Townsend* v. *Swank*, 404 U.S. 282, 286 (1971). It is therefore urged that the "secured by the Constitution" language of § 1343(3) should not be construed to exclude Supremacy Clause issues. That question we leave for another day.
>
> Petitioners contend that § 1983 authorizes suits to vindicate rights under the "laws" of the United States as well as under the Constitution and that a suit brought under § 1983 to vindicate a statutory right under the Social Security Act, is a suit under an Act of Congress "providing for the protection of civil rights, including the right to vote" within the meaning of § 1343(4). They further argue that in any event, § 1343(3) in particular, and § 1343 in general, should be construed to invest the district courts with jurisdiction to hear any suit authorized by § 1983. These issues we also do not reach. . . .

415 U.S. at 533-34 n.5. *See also Lynch* v. *Household Finance Corp.*, 405 U.S. 538, 543-44 n.7 (1972); *Rosado*

v. *Wyman*, 397 U.S. 397, 405 n.7 (1970). *See generally District of Columbia* v. *Carter*, 409 U.S. 418 (1973).

B.

Appellant contended in the district court that her complaint raised a nonfrivolous constitutional claim over which the court was obliged to exercise jurisdiction. Our reading of the complaint is that there was no independent constitutional claim sufficient to fall within the jurisdictional language of § 1343(3). We begin by accepting the district court's characterization: "The only constitutional claim the plaintiff presents is that the alleged conflict between the state and federal statutes and regulations violates rights secured for her by the Supremacy Clause of the Constitution." 418 F. Supp. at 569. The district court, however, found it unnecessary to reach this claim, since it had already determined that jurisdiction existed under both section 1343(3) and (4). Under the current state of the law, we suggest that the proper course would have been to determine *initially* whether what was identified as the "constitutional claim" was of "sufficient substance" to confer jurisdiction under section 1343(3), *i.e.*, one to which Gonzalez' statutory claim could then be appended under *Hagans, supra*.[1]

On the question whether a claim that state law conflicts with federal law establishes a sufficient constitutional claim, through the Supremacy Clause, to establish jurisdiction under section 1343(3), we find ourselves in complete agreement with the Second Circuit's resolution of this same problem. In *Andrews* v. *Maher*, 525 F.2d 113 (2d Cir. 1975), that court was presented with a claim that a Connecticut regulation violated various provisions of the Social Security Act, as well as regulations of the

[1] In advocating this method, we are mindful of the Supreme Court's teaching that where pendent jurisdiction obtains, a court should dispose of the case on the nonconstitutional grounds if possible. *E.g.*, *Hagans* v. *Lavine, supra*, 415 U.S. at 543; *California Human Resources Dep't* v. *Java*, 402 U.S. 121, 124 (1971); *Dandridge* v. *Williams*, 397 U.S. 471, 475-76 (1970). We are merely advising that in order to *obtain* jurisdiction, the constitutional claim(s) should be examined first.

Department of Health, Education and Welfare (HEW), which required that AFDC aid be furnished under certain conditions. Addressing the contention that since this claim required ultimate resort to the Supremacy Clause, it was cognizable under section 1343(3) as a deprivation of rights "secured by the Constitution," the court stated:

> We reject the contention because it transforms statutory claims into constitutional claims by verbal legerdemain. The Supremacy Clause does not secure rights to individuals; it states a fundamental structural principle of federalism. While that clause is the reason why a state law that conflicts with a federal statute is invalid, it is the federal statute that confers whatever rights the individual is seeking to vindicate. Moreover, the language of section 1343 (3) clearly contemplates a distinction between rights secured by the Constitution and rights secured by "any Act of Congress." If the latter were just one variety of the former, it would be unnecessary to mention it as a separate situation. The Supreme Court has rejected a similar attempt to construe statutory claims as Supremacy Clause (and therefore constitutional) claims in the context of 28 U.S.C. § 2281, *Swift & Co.* v. *Wickham*, 382 U.S. 111, 125-28, 86 S.Ct. 258, 15 L.Ed.2d 194 (1965), and we see no reason to reach a different result here.

Id. at 118-19 (footnote omitted).

We are cognizant that other courts have held to the contrary. In *Blue* v. *Craig*, 505 F.2d 830 (4th Cir. 1974), the court cited with approval the Supreme Court's statement in *Swift & Co.* v. *Wickham*, 382 U.S. 111, 125 (1965), that "to be sure, any determination that a state statute is void for obstructing a federal statue does rest in the Supremacy Clause." 505 F.2d at 844. With this we agree. However, the *Blue* court concluded that "a claim that a state statute or regulation is inconsistent with federal law poses a constitutional issue under the Supremacy Clause, jurisdictionally cognizable under § 1343(3)" by relying on the *Hagans* footnote quoted

above. We fail to comprehend how the *Hagans* passage, which specifically left the question unresolved, compels a finding that sections 1983 and 1343(3) are coextensive. A statement which specifically does not meet a question cannot be cited as authority for answering it. We conclude that jurisdiction must rest on a constitutional claim of sufficient substance, independent of statutory conflicts under the Supremacy Clause.

C.

Having determined that Gonzalez' complaint presented no constitutional claim sufficient to confer jurisdiction under section 1343(3), we must consider whether the statutory claims had an independent basis for jurisdiction under either section 1343(3) or (4). Jurisdictional sections 1343(3) and (4) of Title 28 are cast in narrower language than that of remedial section 1983 of Title 42. For example, although section 1983 provides for redress of "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws," section 1343(3) covers only those secured by the Constitution *or* an "Act of Congress *providing for equal rights of citizens.*" (Emphasis added.) [2] Appellant nevertheless urged in the district court that the qualifying language of section 1343(3) is superfluous and that, at any rate, section 1983 should be viewed as an act "providing for equal rights." We cannot agree. Gonzalez claims deprivation not of a right secured by the Constitution, but one falling within the Social Security Act, which contains the AFDC provisions. And provisions of the Social Security Act simply were not designed to provide for the equal rights of citizens for purposes of section 1343(3). *Accord*, *Andrews* v. *Maher*, *supra*, 525 F.2d at 118; *Rosado* v. *Wyman*, 414 F.2d 170 (2d Cir. 1969), *rev'd on other grounds*, 397 U.S. 397 (1970); *Randall* v. *Goldmark*, 495

[2] In *Lynch* v. *Household Finance Corp.*, 405 U.S. 538 (1972), in which the Supreme Court made repeated references to section 1983 "and its jurisdictional counterpart, 28 U.S.C. § 1343(3)", *id.* at 540, 543, the Court itself characterized the "equal rights" language as a "limitation". *Id.* at 544 n.7.

F.2d 356 (1st Cir.), *cert. denied*, 419 U.S. 879 (1974); *Dorak* v. *Shapp*, 403 F. Supp. 863, 865 (M.D. Pa. 1975); *Mattingly* v. *Elias*, 325 F. Supp. 1374, 1383 (E.D. Pa. 1971), *rev'd on other grounds*, 482 F.2d 526 (3d Cir. 1973). *But see Blue* v. *Craig*, *supra*; *Vasquez* v. *Ferre*, 404 F. Supp. 815 (D.N.J. 1975); *Watters* v. *Parrish*, 402 F. Supp. 696 (W.D. Va. 1975).[3]

The district court's total reliance on the rationale of *Vasquez* v. *Ferre*, *supra*, to support jurisdiction under section 1343(3), was misplaced. In *Vasquez*, plaintiffs' complaint set forth three causes of action. The section 1983 claim, in the court's own words, was "based upon the deprivation of statutory *as well as* constitutional rights." 404 F. Supp. at 823 (emphasis added). Thus, under the holding of *Hagans*, the *Vasquez* court was free to explore the statutory claims.

To the extent that *Vasquez* sought to bring all section 1983 claims—wholly or partially statutory—under section 1343(3) automatically, we reject it. There is discussion to the effect that the legislative history of section 1343(3) demonstrates that its language was not intended to reduce the jurisdiction of federal district courts over section 1983 actions. This was the tack taken by the Fourth Circuit in *Blue* v. *Craig*, *supra*, perhaps the foremost circuit court case in favor of bringing wholly statutory section 1983 claims under section 1343.

We cannot accept this approach. The term "equal rights" first appeared in that part of the 1875 revision of the Civil Rights Act of 1871 which addressed jurisdiction of the circuit courts. Rev. Stat. § 629(16).[4] The

[3] An early discussion of this, and many of the issues presented by this case, is found in Note, *Federal Jurisdiction Over Challenges to State Welfare Programs*, 72 COL. L. REV. 1404 (1972).

[4] By the Act of June 20, 1874, § 2, Congress charged Secretary of State Hamilton with the duty of preparing for publication and distribution the Revised Statutes of the United States. 18 Stat. 113-14. This work, according to its title page, embraced the statute of the United States, general and permanent in their nature, in force on Dec. 1, 1873, as revised and consolidated by commissioners appointed under an act of Con-

Fourth Circuit contends, and the district court in *Vasquez* agreed, that the term "equal rights" had a broader meaning at that time than it does today. 505 F.2d at 839; 404 F. Supp. at 824. Under this view, the term is merely a " 'short-hand' reference back to all rights of actions qualifying for enforcement under the various remedial statutes enacted to give effect to the mandates of the Fourteenth Amendment." 505 F.2d at 839.

Absent convincing evidence to the contrary, however, we must believe that Congress intended to separate the jurisdictional section from the section fashioning a remedy, which it did, and that "equal rights" does have meaning of its own. We note specifically, as did the Supreme Court in *Lynch* v. *Household Finance Corp., supra*, 405 U.S. at 544 n.7, that when Congress finally abolished the circuit courts' original jurisdiction in 1911 by merging the previously separate jurisdictional grants for the district courts and circuit courts into what is now section 1343(3), it retained the "equal rights" limitation.

Nor do we believe that the Social Security Act is one "providing for the protection of civil rights," as to bring this action under section 1343(4). No claim was made by Gonzalez of infringement of personal liberty, unlawful classification, or discrimination. Again we make reference to the actions of Congress in enacting the jurisdictional grant. Section 1343(4) was intended to ensure jurisdiction over claims based upon the Civil Rights Act of 1957. *See* H.R. Rep. No. 85-291, 1957 U.S. CODE CONG. & ADMIN. NEWS 1966, 1976 (1957). The Social Security Act, which protects the rights Gonzalez asserts here, is of a decidedly dissimilar purpose.

There is an ancillary argument that section 1983 itself provides a jurisdictional basis under section 1343(4) by virtue of its very existence as a statute protecting "rights, privileges and immunities". *See, e.g., Gomez* v. *Florida State Employment Service*, 417 F.2d 569, 580 n.39 (5th

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gress. Congress "enacted" the Revised Statutes on June 22, 1874; Secretary Fish affixed his seal to the finished work on February 22, 1875.

Brawer v. *Horowitz*, 535 F.2d 830, 838 n. 16 (3d Cir. 1976). *Brawer* provides a discussion of the Act of April 20, 1871.

Cir. 1969). This chicken-and-egg approach must be rejected for several reasons. We have already noted that the language of the two statutes is not the same; one is more restrictive than the other. Second, and more important, it is our view that section 1983 does not in and of itself create or secure any substantive rights; it merely authorizes a cause of action when rights secured by *other* sources have been infringed. In the present case, that "other" source is the Social Security Act. To say in one instant that the Social Security Act is not sufficient in itself to confer jurisdiction under section 1343(4) as an act "providing for the protection of civil rights", and yet to permit the cloaking of that claim within section 1983 *merely in order to confer jurisdiction*, is a route we cannot take. Moreover, as we have heretofore observed, *supra* note 2, the Supreme Court has explicitly rejected the notion that section 1983 is a jurisdictional statute by express reference to 28 U.S.C. § 1343(3) as a "jurisdictional counterpart" of section 1983. *Lynch* v. *Household Finance Corp., supra*, 405 U.S. at 540, 543.

We recognize that the Supreme Court has applied section 1343(4) in causes other than those brought solely under the Civil Rights Act of 1957. *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 412 n.1 (1968) (Civil Rights Act of 1866); *Allen* v. *Board of Education*, 393 U.S. 544, 554 (1969) (Voting Rights Act of 1965). For the reasons expressed by our brethren on the First and Second Circuits, however, we do not go beyond these exceptions. In *Andrews* v. *Maher, supra*, the Second Circuit observed that "there is a difference between extending section 1343(4) to laws such as these, which protect specific rights and engender comparatively little litigation, and applying it to section 1983, which protects all rights 'secured by the Constitution and laws.' " 525 F.2d at 120. And in *Randall* v. *Goldmark*, 495 F.2d 356, 360 (1st Cir.), *cert. denied*, 419 U.S. 879 (1974), the First Circuit expressed similarly compelling reservations:

> Although [*Jones* v. *Mayer*] might be taken as an endorsement of a broad reading of the statute, applying section 1343(4) to section 1983 would in essence

eliminate the jurisdictional amount requirement for any federal question case involving deprivations under color of state law, a consequence arguably so broad when measured in the light of the congressional objectives in adding section 1343(4), that we prefer not to make a positive commitment at this time.

D.

We end our analysis as we began it, by suggesting that the crucial polestar in examining the recent cases in this area is *Hagans, supra.* The presence of a substantial constitutional claim in a cause will afford a litigant the opportunity to press statutory section 1983 claims in the same action. Thus, in *Almenares* v. *Wyman*, 453 F.2d 1075 (2d Cir. 1971), *cert. denied*, 405 U.S. 944 (1972), the Second Circuit could, consistent with its usual position of no jurisdiction over wholly statutory section 1983 claims (*see, e.g., Andrews* v. *Maher, supra; McCall* v. *Shapiro*, 416 F.2d 246 (2d Cir. 1969)), find jurisdiction in a case challenging as violative of HEW regulations state procedures for terminating AFDC benefits where the complaint *also* stated a substantial constitutional claim that the actions of the city violated due process. In *Rosado* v. *Wyman*, 414 F.2d 170 (2d Cir. 1970), *rev'd on other grounds*, 397 U.S. 397 (1970), the same court dismissed a challenge to a state statutory provision which allegedly reduced the amount of AFDC benefits due under the federal statute, since the district judge never had jurisdiction over a constitutional claim to which the statutory claim could have been pendent.

Indeed, the rule of *Hagans* harmonizes our determination in the present case with the decision reached in *Williams* v. *Wohlgemuth*, 540 F.2d 163 (3d Cir. 1976). In *Williams*, former Pennsylvania provisions of the same emergency assistance program at issue here were challenged. At that time, the program limited assistance to emergency needs caused by either civil disorder or national disaster. Unlike the complaint filed for Gonzalez, which contained only the vaguest constitutional overtones relating to the Supremacy Clause, the complaint filed in

Williams alleged that the former Pennsylvania provisions violated the equal protection and due process clauses of the Constitution. Determining that the constitutional claims were neither "wholly insubstantial" nor "wholly frivolous" under *Hagans, supra,* the court decided that the district court had properly taken jurisdiction over the case.

III.

We are not unmindful of the merits of the argument that a federal forum is best suited for adjudicating a claim that federal monies are not being allocated according to a mandatory federal scheme. We have no choice, however, but to act within our jurisdictional limits. It may well be that a federal forum has the necessary sensitivities to handle these claims, but it is for Congress to so determine.

It has been noted that subsequent to enactment of the 1875 Judiciary Act, "the history of federal question jurisdiction . . . [has revolved] largely around the creation by Congress of myriad new federal rights and its provision for their enforcement in the national courts without regard to jurisdictional amount." HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 729 (1953), quoted in *McCall* v. *Shapiro*, 416 F.2d 246, 249, 2d Cir. 1969). In 1969, the prestigious American Law Institute Study issued its Study of the Division of Jurisdiction Between State and Federal Courts. The Study recommended amending § 1331(a) to read: "Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction without regard to amount in controversy of all civil actions. . . ." In introducing S. 1876, the Federal Court Jurisdiction Act of 1973, which specifically incorporated this ALI recommendation, Senator Quentin Burdick stated:

> The most important change here is that Federal question cases may be brought without any requirement that the amount in controversy exceed a fixed dollar amount. The need for a Federal forum is no less in small cases than in large cases. This will clarify many troublesome problems that the district

courts have faced in attempting to determine the value of a case, particularly when equitable relief is requested. Furthermore, it is important that in a case where parties seek to assert Federal rights, they have full access to the district courts.

CONGRESSIONAL RECORD, Vol. 119 at 16679 (May 23, 1973).

Simply put, Congress has not provided for enforcement of the AFDC program without regard to jurisdictional amount. Claims such as that pressed by Gonzalez here may continue to be adjudicated in federal court when they are pendent to a sufficient constitutional claim in the same action, but until Congress acts we are not in a position to adjudicate claims over which we could not exercise independent jurisdiction.

For the foregoing reasons, the judgment of the district court will be vacated and the cause remanded with a direction to dismiss for want of jurisdiction.

TO THE CLERK:

Please file the foregoing opinion.

_____

Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 76-2410

GONZALEZ, JULIA, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR LUIS GONZALEZ, AGE 9, AND MANUEL GONZALEZ, AGE 10, AND FURTHER ON BEHALF OF ALL PERSONS SIMILARLY SITUATED, APPELLANT,

vs.

YOUNG, JAMES F., DIRECTOR, HUDSON COUNTY WELFARE BOARD AND G. THOMAS RITTI, DIRECTOR, NEW JERSEY DIVISION OF PUBLIC WELFARE

(D.C. Civil Action No. 76-455)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Present: ALDISERT, ROSENN and HUNTER, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the District of New Jersey and was argued by counsel on June 7, 1977.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed September 3, 1976, be, and the same is hereby vacated and the cause remanded with the direction to dismiss the complaint for want of jurisdiction.

ATTEST:

/s/ Thomas F. Quinn
Clerk

July 15, 1977

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Civil Action

Docket No. 76-455

ORDER—Aug. 18, 1977

GONZALEZ, JULIA, INDIVIDUALLY AND AS GUARDIAN AD LITEM FOR LUIS GONZALEZ, AGE 9, AND MANUEL GONZALEZ, AGE 10, AND FURTHER ON BEHALF OF ALL PERSONS SIMILARLY SITUATED, APPELLANT,

vs.

YOUNG, JAMES F., DIRECTOR, HUDSON COUNTY WELFARE BOARD AND G. THOMAS RITTI, DIRECTOR, NEW JERSEY DIVISION OF PUBLIC WELFARE, RESPONDENTS.

For the reasons set forth in the Opinion of the United States Court of Appeals for the Third Circuit No. 76-2410 dated July 15, 1977,

It is on this 18 day of Aug. , 1977,

ORDERED that the Complaint of Julia Gonzalez, etc., et als. be and the same is hereby dismissed for want of jurisdiction.

/s/ H. Curtis Meanor
U.S.D.C.

SUPREME COURT OF THE UNITED STATES

No. 77-5324

JULIA GONZALEZ, ETC., PETITIONER,

v.

JAMES F. YOUNG, DIRECTOR, HUDSON COUNTY WELFARE BOARD, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO the United States Court of Appeals for the Third Circuit.

ON CONSIDERATION of the motion for leave to proceed here *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis be*, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is set for oral argument in tandem with No. 77-719.

February 21, 1978

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